

A Defense Lawyer's Perspective of Practice Before Judge David A. Katz

ROBERT C. TUCKER*

Having practiced in the courtroom for forty years, I can say without any hesitation that I have never appeared before any judge who was more of a gentleman than Judge David Katz of the Northern District of Ohio. Nor have I ever met a judge (or frankly anyone) who likes, and respects, lawyers as much as Judge Katz did.

My sense was that he looked upon his service as a federal judge for the Northern District of Ohio as a calling that he immensely enjoyed, fully recognizing the responsibility that the position entailed. His personality permitted him to adopt his own unique approach to fulfilling that responsibility. You see, Judge Katz genuinely liked people; was curious about people; and believed that everyone coming before him mattered, plaintiffs and defendants alike, and most especially the lawyers who appeared before him. Over the thirteen years that I appeared before Judge Katz in his capacity as an MDL judge, I watched as literally hundreds and hundreds of lawyers walked into his Toledo courtroom and later his West Palm Beach courtroom. Each and every one of them concerned about being before an unknown federal judge with unknown proclivities. Then, several hours later, leaving the courtroom feeling like they had forged in that brief time before him a special relationship with him. And you know what, they had. Because they were lawyers, and as such, he believed they were entitled to his respect. We all felt it, every time we were before him.

We marveled at the ease with which Judge Katz stepped into contentious litigation and, through the force of his personality, created an environment where cooperation among the parties became the norm. When state court litigation threatened to derail his strategy for managing an MDL, he took his relationship skills on the road and worked with state court judges and lawyers across the country in what he called "state-federal cooperation." Without fail, the force of his charming and respectful personality carried the day.

I remember many hours sitting in his chambers with some of the most successful and hard-driving plaintiff lawyers in the country, arguing this point or that, back and forth across the table, with Judge Katz scribbling his notes. Then, finally, calling a halt to the back-and-forth and, with his characteristic patience, saying to me, "Bob, I always reserve the right to be wrong, but" I knew in his own respectful way he was telling me that he did not agree with me, but if I could show him at some point that he was "wrong," he would reconsider.

The most remarkable display of judicial patience I ever observed was the day that Judge Katz summoned ninety-plus best-of-the-best plaintiffs' lawyers

* B.A., Williams College, 1973; J.D., The Ohio State University, 1976. Partner at the law firm of Tucker Ellis LLP, Cleveland, Ohio.

from across the country to his West Palm Beach courtroom, allocating three minutes to each of them, to describe why he should appoint them to a leadership position in a new litigation he had been appointed to oversee. I mean it when I say that as the day went along, those of us on the defense side became exhausted by the claims of how vigorous these lawyers were going to be in prosecuting the case against the defendants if chosen for a leadership role. For Judge Katz, he relished the seven hours, scribbling his notes on each presentation, thoroughly enjoying all the information about, and the camaraderie with, a completely new group of lawyers who were before him.

Unlike every other litigation I have ever handled, where being summoned for a case management conference with the judge meant that there was at least a chance that something might happen that was not good for my case, I always looked forward to being before Judge Katz because he always made me feel like he genuinely looked forward to me being there. He wanted to catch up. He needed to know how I was doing after a tragedy struck my family. “How’s Karen? And the girls?” After all the years working together, the line outside of the courtroom between a professional and personal relationship became blurred because of his genuine interest in the lives of the lawyers appearing before him, and not just for me, but for many of the other lawyers working the case too.

But when we stepped into the courtroom, we all knew that despite our “blurred relationship” with Judge Katz, we could count on him to fulfill his calling as a fair and impartial arbiter of disputes, hearing him say time and again, “I always reserve the right to be wrong.” He seldom was.